

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6631 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

PARAS SURENDRABHAI BAVERIA

Versus

STATE OF GUJARAT

Appearance:

MR ZUBIN F BHARDA for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 26/11/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Rajkot city, Rajkot passed an order dated 23rd February 1999 in exercise of powers u/s 3[1] of the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as the PASA Act, for short]. The grounds of detention indicate that the detaining authority considered the fact that eight offences were registered against the petitioner involving him in theft of ornaments and vehicles. The detaining

authority also considered the statements of two witnesses whose identity has not been disclosed, in exercise of powers u/s 9[2] of the PASA Act. A subjective satisfaction was recorded by the detaining authority about the correctness and genuineness of the incidents and the apprehension shown by the witnesses qua the petitioner. The detaining authority therefore arrived at a subjective satisfaction that the petitioner is a dangerous person as defined under the PASA Act. The authority also considered the fact that the chargesheet is filed in most of the cases and is likely to be filed in the remaining cases by the investing agency. That the detainee was in custody in respect of the offences. The detaining authority recorded an apprehension that the petitioner may apply for bail, on getting the bail and pursue his illegal and anti social activities which may risk the public order and public security of city of Rajkot and therefore, detention under the PASA Act was the only remedy available to the detaining authority for immediately preventing the petitioner from pursuing his illegal and anti social activities and therefore, the petitioner came to be detained.

3. The petitioner has approached this court with this petition under Article 226 of the Constitution of India. The petitioner has raised many grounds. One which requires consideration is as under :-

"That the impugned order of detention has been passed against the detainee in judicial custody and the same has been served upon him in judicial custody. It is submitted that from the material supplied to the detainee, it is made out that the detainee was apprehended on 4.2.1999 and from 4.2.1999 till 23.2.1999, till the date of passing of the impugned order of detention, the detainee had not preferred a bail application. Therefore, the impugned order of detention should not have been passed against the detainee in the first instance because there was not an iota of indication that the detainee was to prefer a bail application for being released on bail in connection with the offences alleged against him. Hence, subjective satisfaction arrived at by the detaining authority is absolutely baseless and gets vitiated and the impugned order of detention suffers from non-application of mind, as there was no possibility of detaining being released on bail and that the detainee had not even tried to get himself released on bail as he had not filed any bail application before any court.

Therefore, subjective satisfaction arrived at by the detaining authority is absolutely vague and only the apprehension that the detainee is likely to file bail application and get himself released on bail and thereafter on being released on bail, will indulge into prejudicial activities is nothing but an order which has been passed without there being any cogent reasons and therefore, the same suffers from non-application of mind and hence, the same is required to be quashed and set aside."

4. Mr. Bharda, learned advocate appearing for the petitioner submitted that the detaining authority had no material to apprehend that the petitioner would apply for bail and that he would be granted bail. The authority has not considered the aspect that even if the petitioner applies for bail, the authority could have very well opposed the grant of bail at that point of time. The petitioner could not have pursued his activities while in custody. These aspects are not considered by the detaining authority, nor are they indicated in the grounds of detention. Except bald statement, that the petitioner may apply for bail, may get bail and may pursue his illegal and anti social activities risking the public order and security of the city of Rajkot. There is no material to support this contention. Mr. Bharda states at the bar that the petitioner has been acquitted in all eight cases during June and July 1999. Mr. Bharda therefore urged that the subjective satisfaction arrived at by the detaining authority is not based on any concrete material and therefore, suffers from non-application of mind and the same therefore requires to be quashed and set aside.

5. Mr. H.H. Patel, learned AGP has vehemently opposed this petition. He submitted that the petitioner is a young boy. At young age, he has indulged into illegal and anti social activities and has been booked for as many as eight cases. Mr. Patel submitted that the authority has taken into consideration all relevant aspects and arrived at a subjective satisfaction about the petitioner being a dangerous person and about the involvement of the petitioner in activities which are detrimental to the public order. He has placed reliance on decision of this Court in case of Nasimbanu Munnamiya Shaikh v/s Commissioner of Police, Ahmedabad as reported in 1988 [2] GLH 475 and submitted that the aspect of cancellation of bail need not be specifically considered in the grounds of detention when the authority takes into consideration that it is not possible to immediately

prevent the detinue from his activities by taking steps under the ordinary law and that, despite the cases having been filed against the detinue and pending before the court of law, the detinue continued his activities are sufficient to presume that the detaining authority has taken into consideration a less drastic remedy of resorting to cancellation of bail. He therefore submitted that the petition may be dismissed.

6. Taking into consideration the facts of the case, it transpires from the grounds of detention that the detaining authority was aware of the fact that the detinue was in custody. It is not in dispute that the detinue had not applied for bail either prior to or at the time when the order of detention came to be passed. There appears nothing on record which can be said to have been considered or which can be said to have weighed with the detaining authority to proceed to apprehend an application for bail by the petitioner and grant thereof by the court, if at all it is preferred. In this regard, the decision in the case of Abdul Razak Abdul Wahab v/s S.M.Sinha, Commissioner of Police, Ahmedabad as reported in AIR 1989 SC 2265, may be profitable to be used.

7. At this juncture, it would be appropriate to refer to the decision of Gujarat High Court in the case of Nasibbanu Shaikh [supra] relied on by the learned AGP. In that case, the Division Bench took into consideration the aspect of consideration of less drastic remedy in the nature of cancellation of bail. In that case, the detinue was already released on bail. The detaining authority recorded in the grounds of detention that he had continued to pursue his illegal activities. The authority also recorded that it was not possible to immediately prevent the detinue from his activities by taking steps under the ordinary law. The court observed that these recital by the detaining authority in the grounds of detention indicated that the detaining authority was aware that cancellation of bail would not serve any purpose as cancellation of bail also pertain to the realm of ordinary law.

8. In the instant case, the facts of the present case are totally different. The detinue was in custody when the detention order came to be passed. There was nothing to indicate that he is likely to prefer bail application and therefore, the apprehension hatched by the detaining authority cannot be said to be well founded and the recital to this effect in the grounds of detention appears to have been made without any basis. In this view of the matter, the order of detention can be

said to be suffering from the vice of non-application of mind, more in light of the decision of a Division Bench of this Court [Coram : C.K.Thakkar & A.L.Dave, JJ] in Letters Patent Appeal No. 1056/99 in Special Civil Application No.8650/98 in case of Yunusbhai Hasanbhai Ghanchi v/s District Magistrate, dated 15th September, 1999. In that case, the aspect of cancellation of bail was not considered by the detaining authority which was held to be a case of non-application of mind. In the instant case, the situation is likely to be different and which can be considered to put the case of the petitioner on a little stronger footing. The petitioner was in custody when the order of detention came to be passed. There was no material on record to indicate that he would prefer bail application. The aspect of cancellation of bail is not considered and then, even if the bail is granted, the question of cancellation of bail is also not considered. In view of this situation, the opposition by the respondents cannot be accepted. The petition deserves to be allowed on the ground that the order of detention suffers from the vice of non-application of mind.

9. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Rajkot city, Rajkot dated 23rd February 1999, in respect of the petitioner Paras Surendrabhai Bavaria, is hereby quashed and set aside. The petitioner be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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